IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.784 OF 1997

The State of Maharashtra ...Appellant.

V/s

1. Kalappa Damanna Kamble age 22 years, r/o Koraj

2. Sateri Vithoba Kamble, age 40 years r/o K Karaj,

3. Rajaram Dattu Kamble, age 22 years, r/o. Mraj

4. Damanna Kalappa Kamble, age 45 years, r/o. Miraj Tal Chandgadh, Dist. Kolhapur ...respondents.

Mr. A.M. Shringarpure, APP for the State.

Mr. P.D. Dalvi for the respondents.

CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ

DATED : 12th August, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Aggrieved by the acquittal of respondents of offences punishable under sections 302, 326, 323, 504 read with section 34 of the Penal Code, by the learned Additional Sessions Judge, Gadhinghlaj, State has appealed.

2. Facts which led to prosecution of the respondents are as under:-

3. The complainant as well as all the respondents are residents of village Koraj Taluka Chandgad and are kinsmen. There was a dispute between the accused persons and complainant on account of sharing of offerings before Lord Mankeshwar, a local deity. On 28/10/1995, a quarrel on account of sharing of coconut offering to Lord Mankeshwar arose. Complainant Chandrakant's father jocularly used vulgar expression which was heard by accused No.1's wife Rukmini. She immediately informed her husband who came to the complainant's house with the remaining three accused. Bout of abusing commenced. When complainant sought to intervene, he was slapped by accused No.3 - Rajaram. Accused No.4 - Demanna gave a blow by stick to the complainant. Victim Vaiju Chandru Kamble, complainant's uncle came to intervene and pacify the warring parties. This intervention was repellted by the accused persons. Accused No.1 hit Vaiju on head by brick and accused No.2 - Sateri gave a blow by stick. Vaiju sustained bleeding injury and fell on the ground. On report by the complainant, an offence was registered. Vaiju was taken to hospital but succumbed to his injuries.

4. In course of investigation, police caused post-mortem examination to be conducted on the body of Vaiju, after inquest was done. They recorded statement of witnesses, seized incriminating articles and, on completion of investigation, sent the charge-sheet to the Judicial Magistrate, First Class Chandgad, District Kolhapur. The learned Additional Sessions Judge, Gadhinglaj framed a charge of offence punishable under sections 302, 326, 323, 504 read with section 34 of the Penal Code against all the respondents. They pleaded not guilty and hence were put on trial.

5. Prosecution examined in all 9 witnesses in its attempt to bring home the guilt of the accused. Upon consideration of prosecution evidence, in light of defence raised, learned Additional Sessions Judge acquitted all the accused of offences charged. Aggrieved thereby, the State has appealed.

6. We have heard Shri Shringarpure, the learned Additional Public Prosecutor appearing for the State and Advocate Shri Dalvi for the respondents - accused persons. We have gone through the entire evidence and reappraised it in order to find out sustainability of acquittal recorded by the learned Additional Sessions Judge. The learned Additional Public Prosecutor

submitted that the prosecution had examined three eye witnesses. P.W. 1 - Chandrakant Kamble, Complainant Narsu - Kable and P.W. 7 - Maruti Kamble have all witnessed the incident of assault on complainant himself and his uncle Vaiju. He submitted that cross-examination of these witnesses does not disclose any thing to discard the evidence of these witnesses. According to the learned Additional Public Prosecutor, these ocular testimonies of three eye witnesses unerringly point to the complicity of respondents in assault on the complainant and his uncle Vaiju. He, therefore, submitted that the acquittal recorded by the learned Trial Judge ought to be set aside.

7. P.W. 1 - Chandrakant had given details of the incident. He states that after accused No.1's wife informed accused No.1 of vulgar expression used by the complainant's father, all the accused persons came and started abusing. When complainant tried to pacify respondent - accused No.3 Rajaram slapped him and accused No.4 - Demanna administered a stick blow. This resulted in injuries on Chandrakant. These injuries are duly proved by P.W.6 - Dr. Malvi, a private practitioner who was, at the relevant time, serving as Medical Officer at Chandgad. P.W. 6 - Dr. Malvi proved his injury certificate at Exhibit-30. This shows that complainant had abrasion on left side

of the head and contusion on left side of the back. According to Dr. Malvi (P.W.6), these injuries were simple and caused within six hours of his examination. Incidentally, Dr. Malvi (P.W.6) had also stated that when Vaiju Kamble was brought to his hospital, he had found that Vaiju had a serious head injury with lacerated skull wound and, therefore, he referred Vaiju to hospital at Belgaum in Karnataka State, which is the nearest Medical Centre from Chandgad.

8. P.W. 5 - Narsu too stated about bout of abusing. Narsu, father of P.W.1 - Chandrakant, the complainant, states that accused No.3 slapped his son and accused No.4 gave a stick blow to P.W.1 - Chandrakant. P.W. 7 - Maruti also gave similar version of the incident. The cross-examiantion of these witnesses does not disclose any infirmity to discard their version that accused Nos. 3 and 4 had assaulted complainant Chandrakant and caused injuries to him. P.W. 1 - Chandrakant's version that accused Nos. 1 and 2 hit Vaiju by a brick and stick respectively too has been corroborated by P.W. 5 Narsu and P.W. 7 - Maruti. Even their cross-examination does not disclose any infirmity to warrant rejection of these testimonies.

9. The learned Additional Sessions Judge seems to have held that there were some material omissions and

contradictions in the First Information Report going to the root of the case and that witnesses examined by the prosecution were all related to each other and, therefore, the evidence was unreliable.

10. We have given out anxious thought to the conclusions drawn by the learned Additional Sessions Judge. First, the inconsistencies or contradictions which the learned trial judge refers to are of extremely minor nature and do not go to show that the evidence is unworthy of credence. The learned counsel for respondents could not point out any material contradictions in FIR. As for omission in FIR it is settled position in law that FIR is not supposed to be encyclopaedic account of the incident. It is intended to set the investigating machinery in motion by giving categorical picture about commission of a cognizable offence.

11. As for the witnesses being related to each other, it has to be borne in mind that even accused persons are related to complainant and others. They are all kinsmen. Therefore, this could not have been the reason to reject the otherwise reliable testimony of three witnesses. One instance of how the learned trial judge was misled into reaching incorrect conclusions would be sufficient. In para 12 of his

judgment, the learned trial judge observed that P.W. 7 - Maruti Kamble did not state any thing as to how he and Dhondiba Kamble received coconuts and from whom coconuts were received. It may be seen that in para 2 of deposition of P.W. 7 - Maruti, he had stated that priest of Mankeshwar Temple had given him five coconuts and he had gone with those five coconuts to the house of Narsu Kamble. He, Dhondiba and Narsu were to receive one part each. Thus, it seems to us that the learned trial judge has not evaluated the evidence with care that would be normally expected from the Court of Sessions. It is not necessary to dissect the judgment of the learned trial judge any further.

12. Injuries inflicted upon Vaiju by brick and stick led to his death as observed by P.W. 4 - Dr. Hiremath in his notes of post-mortem examination at Exhibit-27.

13. We would not give any credence to recovery of brick and stick at the instance of accused Nos. 1 and 2 vide Exhibits 21 and 22 sought to be proved by P.W. 3 - Kasham Kamble and P.w. 8 - Investigating Officer A.S.I. Mane. This is so because A.S.I. Mane gives a very mechanical account of making memorandum of statement of accused Nos. 1 and 2 and effecting

consequential seizures. Witness seems to be totally oblivious of the manner in which evidence of discovery ought to be given if the prosecution wishes to rely on discovery as one of the circumstances to bring home the guilt of the accused.

14. In this case, we are however convinced that even after discarding the evidence of discovery, unimpeachable ocular evidence of P.W. 1 - Chandrakant, P.W. 5 - Narsu and P.W- 7 Maruti would point out that accused Nos. 1 and 2 had inflicted blows on deceased Vaiju. We have considered the circumstances in which the assault was made, the intensity of assault, and missiles used for launching this assault. No sharp weapon has been used. Therefore, it may be safe to conclude that in inflicting injuries accused Nos. 1 and 2 did not have any intention to cause death of the victim. Hits by brick or stick, which are ordinarily not weapons of offence, though could be used as such, would not be sufficient to even attribute requisite knowledge of assault leading to death of the victim to the assailants. Since the injuries are grievous in nature, we hold that accused Nos. 1 and 2 are guilty of causing grievous hurt to deceased Vaiju while accused Nos. 3 and 4 are guilty of causing simple hurt to the complainant - Chandrakant.

15. In the result, we allow the appeal filed by the State and set aside the acquittal of the respondents for the offences punishable under sections 326 and 323 of the Penal Code read with section 34 of the Penal Code. Instead, accused Nos. 1 and 2 are convicted of offence punishable under sections 325 read with section 34 of the Penal Code and accused Nos. 3 and 4 are convicted of offence punishable under section 323 read with section 34 of the Penal Code.

16. We have heard the learned counsel for the respondents as well as the learned Additional Public Prosecutor in the matter of sentence. Considering that both the parties are kinsmen, as also absence of any previous criminal history and lapsation of time of almost 10 years since the incident took place, we feel that the following sentence will meet the ends of justice.

17. Accused Nos. 1 and 2 are sentenced to suffer rigorous imprisonment for three years each for offence punishable under section 325 of the Penal Code. Accused Nos. 3 and 4 are sentenced to pay fine of Rs 1000/- or, in default, suffer simple imprisonment for seven days each. Respondents have furnished bail, after appeal by State was admitted. Respondents shall

surrender to their bail within one month before the Court of Sessions, Gadhinglaj, Kolhapur. The Additional Sessions Judge at Gadhinglaj, Kolhapur shall then commit accused Nos. 1 and 2 to serve their sentence and also execute the sentence of accused Nos. 3 and 4.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)